

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

Donald L. Bertelle)	
)	
vs.)	
)	
Illinois Bell Telephone Company)	00-0473
)	
Complaint as to improper installation of)	
residential telephone line and repeated)	
refusal to repair same in Chicago, Illinois.)		

BRIEF OF ILLINOIS BELL TELEPHONE COMPANY

Illinois Bell Telephone Company (“Ameritech Illinois”) submits its brief in this proceeding, following the hearing on the merits of the claims asserted by Donald Bertelle.

Mr. Bertelle claimed that his telephone installation was improper because it used indoor wiring for an outdoor use and because it violated a provision of the Ameritech Illinois tariff governing the location of certain telephone network facilities. He also claimed that Ameritech Illinois unreasonably failed to correct service problems he experienced by asserting that it needed access to his premises when such access actually was not necessary.

The Commission should deny these claims. The wiring used at Mr. Bertelle’s building was appropriate, and the Ameritech Illinois tariff provision on which he relies simply does not address wiring on the customer’s side of the network interface.

Moreover, his service problems apparently resulted from deteriorated wiring on the roof of his building, to which Ameritech Illinois would not have access without his presence.¹

FACTS

Mr. Bertelle established telephone service at 2025 W. Grand Avenue in Chicago in 1994. Tr. at 149. His building occupies most of the lot, with residential space on the second story in the front and a one-story garage extending the width of the lot to the alley in the rear. Ameritech Ex. 1, p. 3. The photographs Mr. Bertelle introduced into evidence do not suggest that the property has a backyard or any exterior passage (such as a gangway) from the front to the rear of the building. See Bertelle Ex. 3A-L.

The Network Point of Presence (“NETPOP”) is the point where Ameritech Illinois’ network facilities terminate and its tariff-based responsibility for maintenance ends. See Bertelle Ex. 1 (Ameritech Tariff 20, Pt. 2, § 2, sheet 27). Conversely, the customer’s facilities (and maintenance responsibility) begin at the NETPOP. See id.; Ameritech Ex. 1, p. 2.² A Network Interface Device (“NID”) is the specific piece of equipment used at a NETPOP. Ameritech Ex. 1, Attachment C (Ameritech Tariff 20, Pt. 2, § 1, sheet 18). The NID is the demarcation point between network cable, which runs from the network side of the NID to the telephone pole (and, beyond that, to the rest of

¹ The Commission actually lacks jurisdiction over Mr. Bertelle’s complaint because it relates to maintenance and repair of inside wiring, which is deregulated. This lack of jurisdiction is the basis for the motion to dismiss Ameritech Illinois also has filed.

² Ameritech Illinois will make repairs to wiring on the customer’s side of the NETPOP either on a fee-for-service basis or through wire maintenance plans to which customers subscribe, such as “linebacker service.” Ameritech Ex. 1, at p. 2.

the network) (Ameritech Ex. 1, p. 5), and customer premises wire, which runs from the customer side of the NID to the customer's premises equipment. Tr. at 281.

The NID at Mr. Bertelle's building is attached to the alley side of the structure, near the garage door. Ameritech Ex. 1, p. 3; Ameritech Ex. 2, p. 3. This is an appropriate location for the NID because it is close to the electrical meter for the building and thus could make use of the meter's grounding potential and minimize extensive runs for grounding wires. See Ameritech Ex. 1, p. 3.

Before Mr. Bertelle removed it,³ the wire marked as Bertelle Ex. 2 ran from the NID, up onto the roof of the garage, and across the roof to the exterior, second-floor wall of the residential portion of the building. Ameritech Ex. 1, p. 3; Tr. at 166-70; Bertelle Ex. 3B-K. Portions of the wire were not attached to the structure (see Bertelle Ex. 3I and J), and the wire apparently crossed onto the roof of the adjoining property. See Tr. 167-68. The length of the wire was more than 25 feet (Tr. at 171) and may be as much as 70 feet. Tr. at 158. Neither Ameritech Illinois nor Mr. Bertelle produced any records showing who installed the wire or when it was installed. See Tr. at 273, 312. Similarly, neither party produced evidence regarding how the wiring came to be in the condition or location it was in when Mr. Bertelle photographed it.

The wire marked as Bertelle Ex. 2 consists mostly of a type of customer premises wiring known as 4-conductor wire (or "quad"), which was commonly used for both

³ Mr. Bertelle removed the wire in September 2000. Tr. at 162.

indoor and exterior installation purposes in Chicago through 1995. Ameritech Ex. 1, p. 4, 5. A newer, thicker section of wire also was spliced in (id., pp. 3-4; Tr. at 158), presumably by an Ameritech Illinois repair technician in June 2000. Tr. at 316-17; Ameritech Ex. 2, Attachments A & B. The thicker wire was connected to the NID at the rear of Mr. Bertelle's building. Tr. at 158.

Ameritech supervising electrician Timothy McGuire, who examined the wire after its removal, testified that it showed normal discoloration and wear due to its age and use outdoors. Ameritech Ex. 1, p. 4. Some of the wire showed damage to the outside sheathing by heat and tar, and the plastic coil protector around a portion of the wire also appeared to have been melted by heat. Id.

Starting in October 1998, Mr. Bertelle made a series of calls to Ameritech Illinois to report problems with his service, primarily intermittent difficulty making or receiving calls. Tr. at 149-50, 183.⁴ An Ameritech Illinois repair technician fixed this problem in January 1999, and Mr. Bertelle had working service from January 1999 through June 2000. Tr. at 183-84. In early June 2000, he again reported a loss of dial tone. Tr. at 151. Ameritech Illinois attempted to correct this problem on June 19, 2000, by splicing a new section of wire into the wiring on the exterior of Mr. Bertelle's building. Tr. at 316-17; Ameritech Ex. 2, Attachments A & B.

⁴ The Ameritech Illinois trouble history for Mr. Bertelle's account (Ameritech Ex. 2, Attachments A and B) contains a reported service problem in October 1995 but no subsequent reports until October 1998. See Tr. at 311-12.

Between October 1998 and June 2000, Ameritech Illinois dispatched repair technicians to Mr. Bertelle's building at least 10 times. See Ameritech Ex. 2, Attachments A & B. The technicians could not gain access to the premises on seven of those dispatches⁵ and, on three other occasions, Mr. Bertelle reported a service problem but refused to make arrangements for access. Ameritech Ex. 2, p. 3. To the extent that any analysis or repair of a service problem would have required a technician to get on the garage roof and look at the wiring, the technician would not do so without the presence of Mr. Bertelle. Tr. at 318-19. The trouble history for the account also shows that the service consistently tested as functioning properly to the NID. Ameritech Ex. 2, p. 3 and Attachments A & B.

Mr. McGuire testified that the service problems Mr. Bertelle reported could have been caused by damage to the "quad" wiring caused by heat, tar, or mortar from the building. Ameritech Ex. 1, p. 4; Tr. at 301-02. Moreover, normal wear on the wire could cause noise or dropouts in service. Ameritech Ex. 1, p. 4. In addition, Mr. McGuire testified that neither the type of wiring used on Mr. Bertelle's side of the NID, nor the length of the wire run from the NID to the residential portion of the building, was the cause of any service problems. Id. at 4-5. In fact, Ameritech Illinois standards suggest that an acceptable run using wiring of that type could be as long as 250 feet. See Ameritech Ex. 1, p. 3 & Attachment A. Mr. McGuire did not testify that the location of

⁵ Technicians isolated the problem to customer equipment on December 28, 1999, and made repairs to wiring on the customer's side of the NID on January 23, 1999, and June 19, 2000. See Tr. at 151, 184, 316-17; Ameritech Ex. 2, Attachments A & B.

some of the wire on an adjacent roof or the lack of clips anchoring it to the building caused the service problems.

At the conclusion of the hearing, the Administrative Law Judge asked Mr. Bertelle what specific relief he was seeking. Mr. Bertelle replied that he wanted the wiring running from the NID into his building “to be correctly installed” (Tr. at 337). He also asked that the NID be moved to the location where the wiring entered the second-floor residential portion of his property. See id. at 175-76, 339. Finally, Mr. Bertelle asked that Ameritech Illinois abate any bill issued subsequent to the time his service stopped working in June 2000. Id. at 338. The Complaint did not ask for such a remedy, however, and Mr. Bertelle did not introduce any evidence regarding his bills.

ARGUMENT

The Commission should deny Mr. Bertelle’s claims. In contrast to his contentions, the record shows that his installation was proper and was in accord with the Ameritech Illinois tariff. The record also shows that the company responded in an appropriate and timely manner to the service complaints he made. In addition, there is no basis for relocating the NID on his property, and the relocation he proposes would run counter to state and federal regulation. Finally, the bill abatement he requests is completely unwarranted.

I. MR. BERTELLE’S INSTALLATION USED PROPER WIRE AND DID NOT VIOLATE THE AMERITECH ILLINOIS TARIFF.

The record refutes any claim by Mr. Bertelle that an inappropriate type of wire was used for his service or that the length of the wiring run violated the Ameritech Illinois tariff. First, there is no evidence that Ameritech Illinois even installed the wiring at issue (see Tr. at 273, 312), so that it should not be held responsible if the wire used were somehow inappropriate. Second, Mr. McGuire’s testimony established that the “quad” wiring found at Mr. Bertelle’s building was commonly used for both indoor and exterior installations in Chicago through 1995. See Ameritech Ex. 1, p. 2, 4. In fact, a wiring run of between 25 and 70 feet, such as that at issue here, is well within the maximum of 250 feet set forth in the Ameritech Illinois standards for premises wiring. See Ameritech Ex. 1, p. 3.

Third, contrary to Mr. Bertelle’s assertion (see Tr. at 154-55), the installation comported with the provisions in the Ameritech Illinois tariff addressing the location of the NETPOP. Paragraph 32.2(B) of Part 2, § 2, of Ameritech Illinois Tariff No. 20 (Bertelle Ex. 1) states that the NETPOP “will normally be located within 25 feet of the point at which the network cable enters the building.” The installation at Mr. Bertelle’s building did not violate this provision, since no network cable enters the building but instead terminates at the NID at the rear of the structure. See Ameritech Ex. 1, pp. 3, 5.

The provision on which Mr. Bertelle relies governs a different situation than that found at his building. Paragraph 32.2(B) actually addresses a situation where a building,

such as a large apartment building, requires more complex inside wiring, and it allows the NETPOP to be located inside the building. See Ameritech Ex. 1, p. 5. This distinction is made clear in several Commission orders deregulating various types of wiring. These orders addressed “building cable,” which the Commission generally defined as “facilities which distribute telecommunications services within a multi-story building or between multiple buildings in a campus-type arrangement.” Order, Ill. C.C. No. 86-0278, p. 2 (Appendix 1). These orders established the demarcation point between regulated and unregulated cable to be “within 25 feet of the cable entrance to a building.” Id. at 6, 8; see also Order, Ill. C.C. No. 86-0292, p. 8 & Appendix A, pp. 16-17 (Appendix 2).

In fact, it is the next provision of the tariff that addresses the location of the NETPOP in a building like Mr. Bertelle’s. That provision states that the NETPOP “will normally be installed externally for one and two line customers in single customer residence and commercial buildings.” Tariff No. 20, Part 2, § 2, ¶ 32.2(C). Mr. Bertelle’s installation unquestionably complied with this provision.

II. AMERITECH ILLINOIS MADE REASONABLE EFFORTS TO ADDRESS MR. BERTELLE’S SERVICE PROBLEMS.

Mr. Bertelle also faults Ameritech Illinois for making unannounced repair visits and being unwilling to undertake certain repairs unless he were present to give its technicians access to his premises. Based on the circumstances of Mr. Bertelle’s installation, the company responded in an appropriate and timely manner to the service complaints he made.

Ameritech Illinois technicians can only repair wiring and other facilities to which they have access. In responding to a trouble report, technicians can run tests to determine if the problem is on the company side of the NID and, if it is, they can make any necessary repairs without having the customer present. Tr. at 326, 331. If the problem is with customer premises wire or equipment, on the customer's side of the NID, the customer should be present, however, to provide access to the premises. Tr. at 326. In addition, a technician normally would not go on the roof of a customer's building without the customer being present. Tr. at 318-19.

The record shows that, between October 1998 and June 2000, Ameritech Illinois dispatched repair technicians to Mr. Bertelle's building at least 10 times. The technicians could not gain access to the premises on seven of those dispatches, but found that service was functioning up to the NID on at least five of those visits. See Ameritech Ex. 2, Attachments A & B.⁶ Technicians did obtain access to the premises during two dispatches – in one instance, isolating a problem to customer equipment and, in the other, making repairs to customer wiring. See Tr. at 151, 184. During the final dispatch, on the evening of June 19, 2000, the technician spliced new wire into the “quad” connecting to the NID at the rear of Mr. Bertelle's building (Tr. at 158, 316-17); Mr. Bertelle apparently was not home at the time. See Complaint, p. 6 (June 21, 2000, letter to Richard Mathias).

⁶ On three other occasions, Mr. Bertelle reported a service problem but refused to make arrangements for access, so no technician was dispatched. See Ameritech Ex. 2, p. 3.

Customer cooperation is necessary for Ameritech Illinois technicians to make repairs to customer premises facilities because the customer needs to provide access to those facilities. Technicians visited Mr. Bertelle's building at least 10 times but were only able to obtain access to the building twice. Even if the trouble with Mr. Bertelle's service arose from the wiring run across the roof of his garage, in his absence from the property, the technicians would have had to climb across the roof to access and repair that wiring. It is only reasonable to expect the customer to be present and provide access to his premises if he is asking Ameritech Illinois to repair facilities located on those premises.

III. THE COMMISSION SHOULD NOT ORDER RELOCATION OF THE NETWORK INTERFACE.

For similar reasons, the Commission should not require Ameritech Illinois to relocate the NID from its current location at Mr. Bertelle's property. Relocating the NID to the middle of Mr. Bertelle's lot would be both inappropriate and contrary to state and federal regulation.

During his testimony, Mr. Bertelle introduced photographs of a neighboring property (Bertelle Ex. 6A-C) at which Ameritech Illinois ran network cable from the telephone pole in the alley into the middle of the lot where it attached to the rear of the house. See Tr. at 176. He suggested that Ameritech Illinois be required to move the NID for his building from the rear of the property, on the alley, to a location on the second-floor residential portion of the building. Tr. at 175-76, 339.

As an initial matter, as Mr. McGuire explained, the current NID location, near the electric meter, complies with standard Ameritech Illinois practices. See Ameritech Ex. 1, p. 3. This location allows use of the grounding potential of the meter and minimizes extensive runs for grounding wires. See Ameritech Ex. 1, p. 3. There is no contrary evidence in the record.

Moreover, the physical layouts of Mr. Bertelle's lot and the neighboring lot are not comparable, and they do not provide the same opportunities for access. The neighboring lot has a back yard and a gangway allowing access along the side of the building, where the NID appears to be located at the first-floor level. See Bertelle Ex. 6A-C; Tr. at 275-76. In contrast, Mr. Bertelle's property appears to have no back yard, the building appears to extend from lot-line to lot-line, and there is apparently no gangway allowing access along the side of the building. See Bertelle Ex. 3A-L. Moreover, his proposed location for the NID is on the second-floor of the building. See Tr. at 176. Ameritech Illinois technicians would have no way to access a NID at this location except by climbing across the roof of the property, and they would be willing to do so only if Mr. Bertelle were present. The company should not be so hindered in accessing its own facilities.

In its decisions deregulating inside wiring, the Commission endorsed an external location for the network interface (or demarcation point), required an external interface for all new installations, and gave telephone companies a period of time to move existing

internal interfaces to an external location. See Third Interim Order, Ill. C.C. No. 86-0278, p. 6 (Appendix 3). The rationale for the Commission’s decision was to provide customers with “a readily accessible test point for the determination of service problems.” Id. at 3. A NID in the second-floor location proposed by Mr. Bertelle would not be readily accessible and therefore would be contrary to Commission policy.

The Federal Communications Commission’s deregulatory scheme for inside wiring similarly supports the current NID location at Mr. Bertelle’s property. Federal regulations in effect while Mr. Bertelle’s wiring was in place generally required the demarcation point between company facilities and customer wiring, for a single-unit installation, to be located within 12 inches of where the telephone wire enters the customer’s premises. See 47 C.F.R. § 68.3 (1999).⁷ The NID at Mr. Bertelle’s property, located on the rear wall of his building, complied with this provision.

The physical layout of Mr. Bertelle’s property, the location of his electric meter, and state and federal regulation all counsel against moving the NID to another location on his property. His request that Ameritech Illinois be required to do so should be denied.

⁷ This definition of “demarcation point” was shortened earlier this year as part of a “streamlining” of FCC rules resulting from the continuing privatization of customer premises facilities. See 66 Fed. Reg. 7581 (Jan. 24, 2001). The new definition became effective May 25, 2001. 66 Fed. Reg. 28841 (May 25, 2001).

IV. THE COMMISSION SHOULD NOT ORDER ABATEMENT OF MR. BERTELLE'S BILLS.

At the close of the hearing, Mr. Bertelle asked that Ameritech Illinois be ordered to abate any bill issued subsequent to the time his service stopped working in June 2000. See Tr. at 338. Such relief is inappropriate here for four reasons.

First, the Commission should not order abatement because such relief is beyond the scope of Mr. Bertelle's complaint. It is a fundamental legal principle that a Commission order cannot exceed the scope of the complaint it has before it. "If the ICC were permitted to enter an order that is broader than the written complaint filed in the case then it would be ruling on an issue of which the responding party had no notice and no opportunity to defend or address." Peoples Gas Light and Coke Co. v. Illinois Commerce Comm'n, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991); see Alton & Southern Railroad v. Illinois Commerce Comm'n, 316 Ill. 625, 629-30 (1925). The Complaint requests no relief with regard to billing and, indeed, does not even mention the topic. Accordingly, that issue is irrelevant here.

Second, the Commission should not order billing abatement because the record contains no evidence to support such relief. In response to the judge's inquiry at the close of the hearing, Mr. Bertelle simply asked to be relieved from any bills issued after June 2000. However, he introduced no evidence regarding the amount of these bills or the length of time he received them, so that no foundation exists for the Commission to order a refund or credit of any particular amount.

Third, abatement is inappropriate because there is no evidence in the record that Ameritech Illinois failed to fulfill its service obligations to Mr. Bertelle subsequent to June 2000. The Ameritech Illinois repair history for Mr. Bertelle's account shows that his service functioned up to the NID as of June 18, 2000, and that it made a repair to the customer premises wire by his garage the following day. See Ameritech Ex. 2, Attachments A and B; Tr. at 316-17. The record contains no evidence that Mr. Bertelle made any more calls requesting repair service after that time. In fact, the record shows that he disabled himself from receiving service in September 2000 when he removed the wiring running from the NID to the second floor of his building. Tr. at 162. Moreover, during the initial hearing on his complaint in August 2000, he expressly stated that he would view any attempt by Ameritech Illinois to repair his wiring as a criminal trespass. Tr. at 23, 25.

The most recent evidence in the record about the status of Mr. Bertelle's service was that it was working up to the NID, so that Ameritech Illinois was in compliance with its service obligations. Mr. Bertelle then removed the wiring on his side of the NID that would allow Ameritech Illinois to provide him with service. Under these circumstances, his request for bill abatement is no different than that of a customer who unplugs his telephone and then wants a credit because he can no longer make calls.

Finally, abating Mr. Bertelle's bill would run counter to the new Illinois telecommunications statute. Although that statute requires local telephone companies to

provide monetary credits to customers who have been out of service for a certain period of time (see 220 ILCS 5/13-712(e)(1)), those credits are not automatic. In particular, the customer is not entitled to a credit if the service problem is caused by the customer's "negligent or willful act," or "by the malfunctioning of the customer's inside wiring." 220 ILCS 5/13-712(e)(6)(i) & (ii). The record shows that Mr. Bertelle's service problems were caused by his inside wiring and that he deliberately removed that wiring. He has no entitlement to an out-of-service credit.

CONCLUSION

THEREFORE, for all of the reasons stated above, the Complaint should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Brief of Illinois Bell Telephone Company was filed with the Commission via e-docket and served upon all parties via Federal Express on this 24th day of August, 2001.

James A. Huttenhower